

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

**In re: PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESAL PRICE LITIGATION**

**MDL No. 1456**  
**Master File No. 01-CV-12257-PBS**  
**Subcategory Case. No. 06-11337**

**THIS DOCUMENT RELATES TO:**

*United States of America ex rel. Ven-A-Care of the  
Florida Keys, Inc., et al. v. Dey, Inc., et al.,  
Civil Action No. 05-11084-PBS*

**Hon. Patti B. Saris**  
**Magistrate Judge**  
**Marianne B. Bowler**

**DEY DEFENDANTS' MOTION TO COMPEL PRODUCTION  
OF DOCUMENTS RESPONSIVE TO SUBPOENA**

Pursuant to Rules 37 and 45 of the Rules of Civil Procedure and Rule 37.1 of the Local Rules of this Court, Defendants Dey, Inc., Dey L.P., and Dey L.P., Inc. (collectively, “Dey”) move to compel compliance with a subpoena *duces tecum* served on Delaware Health and Social Services, Division of Medicaid and Medical Assistance, the North Carolina Department of Health and Human Services, the Oklahoma Health Care Authority, and the South Dakota Department of Social Services.

Since the service of the subpoenas, all four states have expressly refused to comply with the subpoenas and will not produce any responsive documents. Delaware, North Carolina, Oklahoma, and South Dakota's refusal to produce any documents in response to Dey's subpoenas is unjustified.

Dey therefore respectfully requests this Court to enter an Order compelling these state agencies to comply with the subpoenas within a reasonable time set by the Court.

**CERTIFICATION OF COMPLIANCE  
WITH LOCAL RULES 7.1(A)(2) and 37.1**

Pursuant to Local Rule 7.1(A)(2), undersigned counsel hereby certifies that Delaware, North Carolina, Oklahoma, and South Dakota have all communicated their express intention, through either a motion to quash (Delaware), letter (North Carolina), voicemail (Oklahoma), or filed objections (South Dakota), not to comply with Dey's subpoenas despite Dey's good faith efforts to try to resolve or narrow the issues presented by this motion.

**REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(D), Dey requests oral argument on the issues raised in this Motion, which it believes will assist the Court in deciding this motion and request an opportunity to present one.

Dated: December 15, 2008

Respectfully Submitted,

KELLEY DRYE & WARREN LLP

By: /s/ Sarah L. Reid  
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*Attorneys for Defendants Dey, Inc.  
Dey, L.P., and Dey, L.P., Inc.*

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending on December 15, 2008, a copy to LexisNexis File and Serve for posting and notification to all parties. I further certify that on December 15, 2008, the foregoing was served by overnight mail, addressed to the following:

A. Ann Woolfolk  
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By: /s/ Sarah L. Reid  
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